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12 RAY ASKINS AND CHRISTIAN RAMIREZ

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 RAY ASKINS and CHRISTIAN
17 RAMIREZ,

18 Plaintiffs,

19 v.

20 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; R. GIL
21 KERLIKOWSKE, Commissioner of
United States Customs and Border
22 Protection; BILLY WHITFORD,
Director, Calexico Port of Entry;
23 SIDNEY K. AKI, Director, San Ysidro
& Otay Mesa Ports of Entry,

24 Defendants.
25

Case No. 3:12-cv-02600-W-BLM

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs Ray Askins and Christian Ramirez (collectively, “Plaintiffs”) bring
2 this First Amendment action against the U.S. Department of Homeland Security
3 and, in their official capacities, U.S. Customs and Border Protection Commissioner
4 R. Gil Kerlikowske, Calexico Port Director Billy Whitford, and San Ysidro Port
5 Director Sidney Aki (collectively, “Defendants”), and allege as follows.

6 **NATURE OF THE ACTION**

7 1. This is a civil rights action to remedy violations of Plaintiffs’ First
8 Amendment rights by officers and agents of U.S. Customs and Border Protection
9 (“CBP”), an agency within the U.S. Department of Homeland Security (“DHS”).

10 2. The right to gather, receive, record, and disseminate information is
11 grounded in the Free Speech Clause of the First Amendment. This right is further
12 grounded in the Petition Clause of the First Amendment (if the purpose of
13 gathering, receiving, or recording the information is to use it to petition the
14 government for redress of grievances), and the Free Press Clause of the First
15 Amendment (if the purpose of gathering, receiving, or recording the information is
16 to publish and disseminate it to other people).

17 3. The First Amendment guarantees the right to take photographs of and
18 otherwise record law enforcement officers engaged in the public discharge of their
19 duties and other matters or events exposed to public view. For convenience, the
20 terms “photograph” and “photography” as used in this Complaint encompass all
21 forms of recording matters or events, including but not limited to still photography
22 and video recording.

23 4. The public has a significant interest in monitoring and recording
24 government officials at ports of entry, including CBP officers and their agents,
25 “who are granted substantial discretion that may be misused to deprive individuals
26 of their liberties.” *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011).

1 5. CBP routinely and consistently denies public access to basic
2 information about its operations, including whether officers engaged in misconduct
3 are disciplined in any way, thus shielding both the agency and individual officials
4 from public accountability for abusive policies and practices. *See, e.g.,* Fernanda
5 Santos, *Border Patrol Accused of Profiling and Abuse*, N.Y. TIMES, Oct. 14, 2015,
6 available at <http://nyti.ms/1GeW0E7>; Garrett M. Graff, *The Green Monster: How*
7 *the Border Patrol Became America's Most Out-of-Control Law Enforcement*
8 *Agency*, POLITICO, Nov./Dec. 2014, available at <http://politi.co/1t1B4CS>; Carrie
9 Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in*
10 *Agency*, NAT'L PUB. RADIO, Aug. 28, 2014, available at <http://n.pr/1wGGPdV>; *see*
11 *also* AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP
12 ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE (2014), available at
13 <http://bit.ly/SwNbye>.

14 6. In recent years, the physical abuse of persons at or near the border by
15 CBP has been rampant. *See, e.g.,* Joseph Tanfani, et al., *Special Report: How*
16 *Tasers Became Instruments of Excessive Force for the Border Patrol*, L.A. TIMES,
17 Oct. 30, 2015, available at <http://lat.ms/1M5U2GF>. Such abuse has further fueled
18 the public's interest in monitoring and recording public actions of CBP officials at
19 ports of entry. For example, CBP officials' excessive use of force has resulted in a
20 record number of deaths, including the deaths of U.S. citizens and lawful permanent
21 residents. *See, e.g.,* Brian Bennett, *Border Patrol Absolves Itself In Dozens of Cases*
22 *of Lethal Force*, L.A. TIMES, June 15, 2015, available at <http://lat.ms/1Xxf3hA>;
23 Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People*
24 *in 10 Years. Most Were Unarmed. And Not One Officer Has Been Disciplined*. NEW
25 REPUBLIC, Jan. 4, 2015, available at <http://bit.ly/1BBYcyn>. In view of CBP's
26 unwillingness or inability to timely discipline officials for misconduct and abuse,
27
28

1 the importance of public access to information regarding CBP's actions cannot be
2 overstated.

3 7. Along the U.S.-Mexico border, DHS either owns or leases from other
4 federal government agencies large swaths of property, including ports of entry and
5 areas surrounding ports of entry. For convenience, the terms "port of entry" or "port
6 of entry property" as used in this Complaint encompass all such property, whether
7 owned or leased by DHS and/or CBP, to which Defendants assert their photography
8 policies, described below, apply.

9 8. CBP has a national policy that prohibits photography on any port of
10 entry property without advance official permission. *See* U.S. Customs and Border
11 Protection, Office of Public Affairs, Roles, Functions and Responsibilities, CBP
12 Directive No. 5410-001B (Mar. 18, 2009) (attached as Exhibit A) (hereinafter
13 "Policy").

14 9. According to the Policy, authorization of photography "at CBP
15 facilities shall be made in consultation with the appropriate Public Affairs Specialist
16 and with the concurrence and control of the appropriate CBP supervisor." *Id.* at Part
17 6.2.3. The Policy contains no standards or criteria limiting CBP officials' discretion
18 to grant or deny permission to take photographs on port of entry property.

19 10. Likewise, CBP's media "ground rules" for "Southern California ports
20 of entry"—which CBP applies to photography by any person in the areas at issue in
21 this action—require individuals to obtain advance authorization from CBP officials
22 in order to take photographs on any port of entry property. *See* U.S. Customs and
23 Border Protection, Ground Rules for News Media Representatives When Visiting
24 Southern California Ports of Entry (attached as Exhibit B) (hereinafter "Ground
25 Rules"). The Ground Rules contain no standards or criteria limiting CBP officials'
26 discretion to grant or deny permission to take photographs on port of entry
27 property.
28

1 11. The Policy and Ground Rules are currently in effect and were in effect
2 at all times relevant to this action.

3 12. Both individually and taken together, the Policy and Ground Rules
4 violate the First Amendment by (a) conferring unlimited discretion upon CBP
5 officials to grant or deny permission to take photographs on port of entry property,
6 including areas of that property that constitute a traditional public forum, and
7 (b) unreasonably restricting the right to take photographs of matters or events
8 exposed to public view from exterior or outdoor areas of port of entry property,
9 including areas of that property that constitute a traditional public forum.

10 13. Acting pursuant to the Policy and Ground Rules, CBP officers violated
11 Plaintiff Ray Askins's First Amendment rights by directing him to cease taking
12 photographs of the exterior of the Calexico West port of entry building from a
13 location outside that building, and by erasing all but one of the photographs he did
14 take of said exterior.

15 14. Acting pursuant to the Policy and Ground Rules, CBP officers and
16 their agents violated Plaintiff Christian Ramirez's First Amendment rights by
17 directing him to cease taking photographs of matters and events exposed to public
18 view in outdoor areas of the San Ysidro port of entry, and by erasing all of the
19 photographs he did take of said events.

20 15. As enforced by CBP, the Policy and Ground Rules unconstitutionally
21 prevent Mr. Askins and Mr. Ramirez from freely exercising their First Amendment
22 rights to photograph and record matters and events exposed to public view from
23 exterior or outdoor areas of CBP ports of entry.

24 16. Plaintiffs' cases are not unique. CBP officers and their agents
25 frequently deter or prevent individuals from documenting potential misconduct by
26 CBP officers and other matters of public interest, and destroy photo or video
27 evidence of the same.
28

1 17. As enforced by CBP, therefore, the Policy and Ground Rules chill and
2 deter reasonable persons from exercising their First Amendment rights to
3 photograph and record matters exposed to public view from exterior or outdoor
4 areas of CBP ports of entry.

5 18. Perhaps the most well-known recent example of this unconstitutional
6 interference occurred in May 2010, when CBP officers confronted individuals who
7 captured video footage of the government's lethal beating of Anastasio Hernandez
8 Rojas at the San Ysidro port of entry. CBP officers demanded that some of these
9 eyewitnesses hand over their cell phones or delete the video they had just recorded
10 of the incident. *See, e.g.,* R. Stickney, *Judge Clears Way for Family's Civil Suit in*
11 *Border Beating Death*, NBC SAN DIEGO, Oct. 7, 2014, *available at*
12 <http://bit.ly/1MSRJYI> (noting that, when members of the public gathered to record
13 the fatal beating of Hernandez Rojas, one federal officer confiscated witness cell
14 phones and erased images and videos recorded thereupon); Cristina Costantini &
15 Elise Foley, *Anastasio Hernandez-Rojas Death: Border Patrol Tasing Incident*
16 *Complicated by New Footage (VIDEO)*, HUFFINGTON POST (updated Apr. 24, 2012,
17 12:40 PM EDT), <http://huff.to/1jzwlFu>.

18 19. After eyewitness videos of Hernandez Rojas's brutal beating surfaced,
19 sixteen members of Congress sent a letter to CBP seeking information about the
20 agency's use-of-force policies and internal investigation protocols. *See* Press
21 Release, Congressman José E. Serrano, Sixteen Members of Congress Call for
22 Justice in Hernandez-Rojas Case (May 10, 2012), *available at*
23 <http://1.usa.gov/1HybeQE>. Subsequent public pressure led CBP to undertake a
24 three-pronged review of its use-of-force policies and, ultimately, to release those
25 policies to the public. *See, e.g.,* Adrian Carrasquillo, *Border Patrol Finally*
26 *Releases Report Critical of Use of Deadly Force*, BUZZFEED NEWS (May 30, 2014,
27 1:25 PM PST), <http://bzfd.it/1PSKkcv>.
28

21. Plaintiff Ray Askins is, and at all relevant times was, a citizen of the United States. Since at least 2008, Mr. Askins has researched environmental health hazards in Imperial County and, in particular, in Calexico along the U.S.-Mexico border. He has also served on the Imperial-Mexicali Air Quality Task Force since at least 2009.

22. Plaintiff Christian Ramirez is, and at all relevant times was, a citizen of the United States. Since 2012, he has served as the Human Rights Director for Alliance San Diego, an organization focused on building coalitions to promote social justice and social change. He also serves as the Director of the Southern Border Communities Coalition, which brings together more than sixty organizations reaching from San Diego, California to Brownsville, Texas to promote policies and solutions that improve the quality of life in border communities.

23. Defendant U.S. Department of Homeland Security is an executive department of the United States.

24. U.S. Customs and Border Protection is an agency within DHS. The agency employs more than 60,000 individuals and is one of the world's largest law enforcement organizations.

1 governmental and policy meetings in Imperial County. He usually crosses into the
2 United States through the Calexico West port of entry.

3 33. Mr. Askins is deeply concerned with environmental and environmental
4 health issues affecting the U.S.-Mexico border region generally and Imperial
5 County in particular. He himself suffers from chronic obstructive pulmonary
6 disease, a progressive disease which makes it difficult for him to breathe.

7 34. Imperial County and its constituent communities, including the City of
8 Calexico, suffer from high rates of poverty and pollution, which together contribute
9 to significant public health and environmental problems. *See, e.g.,* Tony Perry,
10 *Deepening Woes for the Imperial Valley*, L.A. TIMES, Apr. 27, 2009, *available at*
11 <http://lat.ms/1N9Q1xp> (detailing historic, persistent poverty and environmental
12 pollution afflicting Imperial County).

13 35. A higher proportion of Imperial County residents live at or below the
14 federal poverty level compared to other California counties, which, according to the
15 county's Community and Economic Development Department, means that
16 residents "face many challenges in meeting basic health needs." *See* U.S. CENSUS
17 BUREAU, STATE & COUNTY QUICK FACTS: IMPERIAL COUNTY,
18 <http://1.usa.gov/1ieEVPk> (last visited Nov. 2, 2015); IMPERIAL CNTY. CMTY. &
19 ECON. DEV. DEP'T, COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY 2014–
20 2015 ANNUAL UPDATE 25 (2015), *available at* <http://bit.ly/1MgQg9l> (hereinafter
21 "CEDS 2014–15"). "Much of Imperial County is designated as a medically
22 underserved area." CEDS 2014–15 at 25.

23 36. According to the California Department of Public Health, Imperial
24 County's poor air quality, combined with many residents' lack of access to primary
25 health care providers, have contributed to very high rates of asthma in the area. *See*
26 Patricia Leah Brown, *The Air is Dark and Asthma is Deadly Along the Mexico*
27 *Border*, REVEAL: CTR. FOR INVESTIGATIVE REPORTING, Apr. 21, 2015, *available at*
28

1 <http://bit.ly/1XxwSgv>. A recent study by a San Diego State University
2 environmental health professor found “that diesel and gasoline from Mexicali,
3 Mexico, most likely from idling vehicles at the border crossing, is the No. 1 source
4 of particulate matter in Calexico, California, increasing in intensity when the wind
5 blows into the Imperial Valley from the south.” *Id.* Calexico residents are exposed
6 to high levels of harmful particulate matters in the air; the highest levels, and the
7 most destructive particulates, are found near the border crossing, through which
8 more than seven million trucks and passenger vehicles commute annually. *Id.*

9
10 37. Health experts have long acknowledged a link between high-traffic
11 areas and asthma severity. *See, e.g.,* YING-YING MENG, ET AL., UCLA HEALTH
12 POLICY RESEARCH BRIEF: LIVING NEAR HEAVY TRAFFIC INCREASES ASTHMA
13 SEVERITY 1 (2006), available at <http://bit.ly/1S83ABS>. For adults with asthma,
14 medium to high traffic exposure has been found to increase the likelihood of
15 chronic symptoms by approximately forty to eighty percent. *Id.* Latino children
16 with asthma are nearly two-and-a-half times more likely than White children to live
17 near high-traffic areas. *Id.* at 4.

18 38. Hospitalization rates for asthma in Imperial County are among the
19 highest in the state, especially for children. Whereas the rate of emergency hospital
20 visits for asthma in California as a whole is 46.1 per 10,000 residents, in Imperial
21 County, it is more than double: 91.0 per 10,000 residents. CEDS 2014–2015 at 26;
22 *see also, e.g.,* Anna Gorman, *Imperial County Leads State in Treatment of Children*
23 *with Asthma*, L.A. TIMES, July 16, 2012, available at <http://lat.ms/1Nmo7AT>.

24 39. Mr. Askins’s environmental advocacy work involves extensive
25 research, investigation, and analysis of CBP border activities, including in
26 particular activities at or near U.S.-Mexico ports of entry. He is especially
27 interested in how emissions from idling vehicles awaiting primary or secondary
28

1 inspection at the ports of entry contribute to environmental pollution and health
2 problems in Imperial County and Mexicali.

3 40. For several years, beginning in 2008, Mr. Askins maintained and
4 contributed regularly to a blog (now defunct) that addressed environmental issues
5 and human rights abuses in the U.S.-Mexico border region.

6 41. Since at least March 2008, Mr. Askins has contributed to or co-
7 authored numerous reports relating to the environmental consequences of law
8 enforcement activities at or near U.S.-Mexico ports of entry.

9 42. Mr. Askins has submitted various environmental bulletins and reports
10 based on his research to public officials, including: (a) members of the U.S.
11 Environmental Protection Agency; (b) the Imperial County Board of Supervisors;
12 and (c) Bob Filner, during his tenure as U.S. Representative for California's 51st
13 congressional district, which includes all of Imperial County and the southern
14 portions of San Diego County.

15 43. Since at least 2009, Mr. Askins has served on the Imperial-Mexicali
16 Air Quality Task Force.

17 44. In April 2014, Dr. Paul English, MPH, Ph.D., invited Mr. Askins to
18 join the Imperial County Community Air Monitoring Project of the California
19 Environmental Health Tracking Program. As a member of this project, Mr. Askins
20 has worked in a team to place forty air quality monitors throughout Imperial
21 County, including one such monitor near the Calexico West port of entry.

22 **II. 2012 INCIDENT**

23 45. In the spring of 2012, Mr. Askins was preparing a presentation for a
24 conference entitled "Health Impacts of Border Crossings," which was scheduled for
25 May 3 and 4, 2012 in San Ysidro, California.

26 46. The conference was funded by the Southwest Consortium on
27 Environmental Research and Policy, through a cooperative agreement with the U.S.
28

1 Environmental Protection Agency. Conference organizers described the event as
2 one that

3
4 focused on local health impacts of the U.S.-Mexico border. The
5 emphasis was on avenues for reduction of exposures to traffic
6 pollutants experienced by people crossing the border at the U.S.-
7 Mexico Ports of Entry, workers and the community on both sides of
8 the border. The conference included participation of researchers and
9 stakeholders from the San Diego-Tijuana region and other areas along
10 the U.S.-Mexico border with similar issues.

11 Exhibit C (Health Impacts of Border Crossings Conference 2012).

12 47. To prepare for a presentation at this conference, Mr. Askins planned to
13 visit the Calexico West port of entry. Specifically, Mr. Askins intended to
14 photograph the secondary vehicle inspection area of the port of entry to
15 demonstrate that CBP did not make full and proper use of this area, leading to
16 longer delays and, consequently, more emissions pollution from vehicles waiting to
17 cross the border.

18 48. On or about April 18, 2012, Mr. Askins contacted CBP Officer John
19 Campos by phone and requested permission to take three or four photographs inside
20 the secondary inspection area at the Calexico port of entry the next day. Officer
21 Campos said that this would be inconvenient, but otherwise did not object to the
22 request.

23 49. On or about April 19, 2012, Mr. Askins called Officer Campos to
24 follow up. When Officer Campos did not answer, Mr. Askins left a voicemail
25 message stating that, instead of taking photographs inside the Calexico port of entry
26 building, Mr. Askins would stand on the street outside that building and take
27 photographs of the exit of the secondary inspection area.

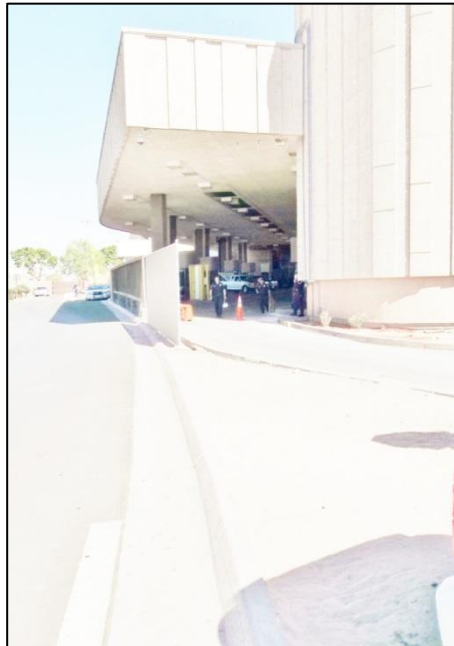
28 50. On or about April 19, 2012, at approximately 3:10 p.m., Mr. Askins
was standing near the shoulder of a public street in Calexico, California,
approximately fifty to 100 feet from the exit from the secondary inspection area at

1 the Calexico West port of entry. More precisely, Mr. Askins was standing near the
2 shoulder of the public street at the intersection of First Street and Paulin Avenue.

3 51. Immediately behind Mr. Askins was the Genaro Teco Monroy
4 Memorial International Border Friendship Park, a small public park with grass
5 lawns and concrete benches overlooking the Calexico West port of entry secondary
6 inspection area.

7 52. Both the public street and the park are public forums open to speech
8 and expressive activity by tradition and past usage. Upon information and belief,
9 Defendants consider some or all of these areas to be part of the Calexico West port
10 of entry.

11 53. From this vantage point, outdoors and outside any port of entry
12 building or structure, Mr. Askins took three or four photographs of the exit of the
13 secondary inspection area, including the following photograph:



25 54. While taking these photographs, Mr. Askins was not engaged in any
26 form of commercial speech or activity. Mr. Askins took these photographs for
27 political and/or other non-commercial purposes.
28

1 55. The building exterior photographed by Mr. Askins was exposed to
2 public view from exterior and outdoor areas of both port of entry property and
3 adjacent property.

4 56. Additionally, when taking these photographs, Mr. Askins was not
5 engaged in the act of crossing the border. Rather, Mr. Askins was standing outdoors
6 on the U.S. side of the border when taking the photographs.

7 57. Shortly after Mr. Askins took the photographs, a number of male CBP
8 officers approached him. One or two of the officers demanded that Mr. Askins
9 delete the photographs. Mr. Askins stated that he would not do so.

10 58. One or more of the CBP officers then stated that they would smash
11 Mr. Askins's camera if he did not delete the photographs. Mr. Askins again
12 declined to delete the photographs, explaining that they were his property.

13 59. One or more of these officers then handcuffed Mr. Askins from behind
14 and took his camera, passport, car keys, and hat.

15 60. Throughout this encounter, the CBP officers spoke to Mr. Askins in an
16 aggressive and threatening manner, despite the fact that Mr. Askins at no point
17 posed a threat to the safety of the officers and at no point actively resisted arrest.
18 Furthermore, Mr. Askins committed no crime and took no actions giving rise to a
19 reasonable suspicion or probable cause that he had committed or was about to
20 commit a crime under any law that could constitutionally have been applied to him.
21 To the extent Mr. Askins may have violated any law making his photography
22 illegal, that law is unconstitutional as applied to him.

23 61. After Mr. Askins was handcuffed and his possessions taken, one
24 officer forcefully led him into a small room inside the secondary inspection area,
25 holding Mr. Askins's right arm in a tight grip that caused significant pain and
26 bruising on the inside of Mr. Askins's arm. The officer told Mr. Askins to sit down.
27 Mr. Askins was not free to leave the room.
28

1 62. After about twenty minutes, the same officer led Mr. Askins to a
2 separate room, where he subjected Mr. Askins to an invasive and embarrassing
3 physical search. During the search, Mr. Askins remained clothed while the officer
4 used his hands to pat Mr. Askins's entire body. Mr. Askins felt that he was being
5 groped, and experienced particular discomfort when the officer unnecessarily
6 squeezed and touched Mr. Askins's groin area several times.

7 63. One or more CBP officers then told Mr. Askins that he was free to go
8 and returned his belongings, and one officer escorted him to the exit. From the
9 moment CBP officers first detained Mr. Askins to the moment they told him he was
10 free to go, approximately twenty-five to thirty-five minutes elapsed. The officers
11 had no warrant or other constitutional justification for the search and/or seizure of
12 Mr. Askins's person or property.

13 64. When Mr. Askins later scrolled through the pictures on his digital
14 camera, he discovered that all but one of the photographs he just had taken of the
15 port of entry had been deleted.

16 65. On April 20, 2012, Mr. Askins sent a letter of complaint to Port
17 Director Billy Whitford regarding the April 19 incident. That same day, Director
18 Whitford responded in writing, stating:

19 In response to the issues raised in your complaint, the area in
20 question is currently under the jurisdiction of GSA [(General Services
21 Administration)] and CBP. CBP security policies prohibit visitors at
22 CBP-controlled facilities from using cameras and video recording
23 devices without the prior approval from the senior CBP official (Port
Director or designee).

24 The officer perceived your actions as a security violation and
25 detained you briefly until a supervisor was contacted and it was
26 determined that you posed no threat to the facility, the public, or the
officers. I regret that this incident occurred and hope that all officers
conducted themselves in a professional manner at all times.

27 *See Exhibit D (Email from Billy B. Whitford to Ray Askins (Apr. 20, 2012)).*
28

1 **III. NECESSITY OF AND ENTITLEMENT TO INJUNCTIVE**
2 **RELIEF**

3 66. Mr. Askins wants to continue photographing matters and events
4 exposed to public view from outdoor and exterior areas of the Calexico port of
5 entry. As a result of his experience and in light of the Policy and Ground Rules,
6 however, Mr. Askins has a reasonable fear that if he does continue such
7 photography, he will again be subject to interference by CBP officers and/or their
8 agents. Such interference may include Mr. Askins's detention or arrest and the loss
9 of his personal property, such as his camera and photographs.

10 67. Mr. Askins seeks to photograph and record matters and events exposed
11 to public view in the area immediately surrounding the Calexico port of entry
12 building, including vehicular traffic and CBP officers engaged in the public
13 discharge of their duties, in order to document air and other environmental pollution
14 as well as human rights abuses.

15 68. Unless enjoined by this Court, CBP can and will continue to enforce
16 the Policy and Ground Rules to prohibit Mr. Askins from photographing matters
17 and events exposed to public view from outdoor or exterior areas of the Calexico
18 port of entry, including vehicular traffic and CBP officers engaged in the public
19 discharge of their duties.

20 69. As a result of CBP's enforcement of the Policy and Ground Rules, Mr.
21 Askins has been chilled, hindered, deterred, and prevented from freely exercising
22 his First Amendment right to photograph matters and events exposed to public view
23 from outdoor or exterior areas of the Calexico port of entry, including vehicular
24 traffic and CBP officers engaged in the public discharge of their duties.

25 70. Mr. Askins is thus suffering, and will continue to suffer, irreparable
26 harm as a result of the violation of his First Amendment rights.

27 71. Mr. Askins has no adequate remedy at law.
28

B. PLAINTIFF CHRISTIAN RAMIREZ

I. PERSONAL AND PROFESSIONAL BACKGROUND

72. Mr. Ramirez is a U.S. citizen living in San Diego, California. He is a nationally-recognized border policy advocate and a leading expert on border-related civil and human rights abuses.

73. Since 2012, Mr. Ramirez has served as the Human Rights Director at Alliance San Diego, a non-profit, non-partisan organization whose stated mission is to provide a means for diverse individuals to share information, collaborate on issues, and mobilize for change in the pursuit of social justice, especially in low-income communities and communities of color. Alliance pursues its mission through targeted civic engagement programs and strategic coalitions that focus on specific issues and policy reforms, including issues related to human and immigrant rights along the U.S.-Mexico border.

74. Since 2012, Mr. Ramirez also has served as the Director of the Southern Border Communities Coalition, which brings together more than sixty organizations reaching from San Diego, California to Brownsville, Texas to promote policies and solutions that improve the quality of life in border communities.

75. Mr. Ramirez regularly travels to the U.S.-Mexico border, both to visit family members living in Mexico and to observe law enforcement activity and monitor human rights issues. He does this not only for work but also out of a sense of personal responsibility as a lifelong member of the border community.

76. The San Ysidro port of entry is the busiest land port in the Western Hemisphere. *See, e.g.*, U.S. General Services Administration, San Ysidro Port of Entry, <http://1.usa.gov/1H8W8jA> (last visited Nov. 5, 2015). An estimated 25,000 northbound pedestrians cross from Mexico into the United States through the San Ysidro port of entry each day. *Id.*

1 77. As explained, the incidence of civil and human rights violations along
2 the U.S.-Mexico border, including at or near the San Ysidro port of entry, and the
3 lack of CBP accountability for such abuses, are matters of grave public concern.

4 78. Members of the public, like Mr. Ramirez, seek to document CBP
5 activity at or near the San Ysidro port of entry to safeguard against civil and human
6 rights abuses, including excessive use of force and racial profiling.

7 **II. 2010 INCIDENT**

8 79. On June 20, 2010—Father’s Day—Mr. Ramirez and his wife crossed
9 the border into Mexico to visit his father. They parked on the U.S. side of the
10 border and walked into Mexico through the pedestrian entrance at San Ysidro.

11 80. Mr. Ramirez and his wife returned to the United States the same
12 afternoon. They passed through primary inspection at the San Ysidro port of entry
13 without incident. Once inside the United States, they walked toward their vehicle,
14 crossing a pedestrian bridge that passed over the southbound lanes of Interstate 5.

15 81. While crossing this pedestrian bridge, Mr. Ramirez noticed that
16 women were being inspected and patted down by male CBP officers at a
17 southbound security checkpoint below him. The officers appeared to be pulling
18 aside only women for inspection.

19 82. Mr. Ramirez observed the checkpoint for approximately ten to fifteen
20 minutes. During that time he took approximately ten photographs using his cell
21 phone camera, out of concern that the CBP officers might have been acting
22 inappropriately.

23 83. While taking these photographs, Mr. Ramirez was not engaged in any
24 form of commercial speech or activity. Mr. Ramirez took these photographs for
25 political and/or other non-commercial purposes.

26 84. Additionally, when taking these photographs, Mr. Ramirez was not
27 engaged in the act of crossing the border, nor was he inside any port of entry
28

1 building. Rather, Mr. Ramirez was standing outdoors on the U.S. side of the border
2 when taking the photographs.

3 85. The events and individuals photographed by Mr. Ramirez were
4 exposed to public view in exterior and outdoor areas of the San Ysidro port of entry
5 property.

6 86. While observing the checkpoint, Mr. Ramirez and his wife were
7 approached by two men who appeared to be private security officers.

8 87. One of the private security officers asked for Mr. Ramirez's personal
9 identification documents. Mr. Ramirez explained that he and his wife had already
10 passed through inspection and declined to hand over his documents again.

11 88. One of the private security officers then ordered Mr. Ramirez to stop
12 taking photographs. Mr. Ramirez refused and took a picture of the private security
13 officer. Acting aggressively, the private security officer attempted to grab Mr.
14 Ramirez.

15 89. Mr. Ramirez stopped taking photographs and said "let's go" to his
16 wife; the two began to descend from the pedestrian bridge. The private security
17 officers, whom Mr. Ramirez heard make a radio call for backup, followed them.

18 90. At the bottom of the pedestrian bridge, approximately five to seven
19 CBP officers were waiting. They asked whether and why Mr. Ramirez had taken
20 any photographs. Mr. Ramirez responded that he had taken photographs because he
21 had witnessed what he believed to be inappropriate activity by CBP officers at the
22 checkpoint—namely, the patting down of women by male officers.

23 91. The CBP officers at the bottom of the bridge asked Mr. Ramirez to
24 turn over his phone. Mr. Ramirez refused and explained that he was willing only to
25 show them the photographs.

26 92. An officer in plain clothes, who later identified himself as a U.S.
27 Immigration and Customs Enforcement ("ICE") officer, confronted Mr. Ramirez
28

1 and asked for Mr. Ramirez's personal identification documents. Mr. Ramirez
2 refused to turn over his documents and explained that he and his wife had already
3 been inspected.

4 93. The ICE officer then said to Mr. Ramirez, "Give me one other reason
5 to take you down." He took Mr. Ramirez's and Mr. Ramirez's wife's passports out
6 of Mr. Ramirez's shirt pocket, without Mr. Ramirez's consent, and went to a nearby
7 office.

8 94. A CBP officer then confiscated Mr. Ramirez's cell phone, again
9 without Mr. Ramirez's consent, and scrolled through the photographs. As he did so,
10 the officer made comments about Mr. Ramirez's personal pictures.

11 95. The CBP officer eventually found the photographs Mr. Ramirez had
12 taken from the pedestrian bridge. The officer then proceeded to delete these images,
13 without Mr. Ramirez's consent. After deleting the photographs, the CBP officer
14 returned the cell phone to Mr. Ramirez.

15 96. When Mr. Ramirez later looked through the contents of his cell phone,
16 he confirmed that the CBP officer had deleted all of the photographs that Mr.
17 Ramirez had just taken, without Mr. Ramirez's consent or permission.

18 97. Throughout this encounter, which lasted ten to fifteen minutes after
19 Mr. Ramirez and his wife had reached the bottom of the pedestrian bridge, Mr.
20 Ramirez and his wife were separated from each other by CBP officers. The officers
21 essentially created a buffer area around Mr. Ramirez while they questioned him and
22 took his cell phone.

23 98. Moreover, the officers spoke to Mr. Ramirez in an aggressive and
24 threatening manner throughout this encounter, despite the fact that Mr. Ramirez at
25 no point posed a threat to the safety of the officers and at no point actively resisted
26 arrest. Furthermore, Mr. Ramirez committed no crime and took no actions giving
27 rise to a reasonable suspicion or probable cause that he had committed or was about
28

1 to commit a crime under any law that could constitutionally have been applied to
2 him. To the extent Mr. Ramirez may have violated any law making his photography
3 illegal, that law is unconstitutional as applied to him.

4 99. Approximately ten to fifteen minutes after confiscating the passports,
5 the ICE agent returned with the documents and gave them back to Mr. Ramirez.
6 Mr. Ramirez and his wife were then allowed to continue on their way.

7 100. Neither Mr. Ramirez nor his wife felt free to leave at any point during
8 this encounter. The officers had no warrant or other constitutional justification for
9 the search and/or seizure of Mr. Ramirez's person or property.

10 **III. RECONSTRUCTION OF SAN YSIDRO PORT OF ENTRY**

11 101. In or around late 2007, a three-phase, multi-million dollar project
12 commenced to reconstruct the San Ysidro port of entry. *See* GSA Fact Sheet:
13 Reconfiguration and Expansion of the Existing Port of Entry (Sept. 2007),
14 available at <http://bit.ly/1XkvNZe> (last visited on Nov. 5, 2015). The project is
15 currently expected to be completed by Summer 2016. *See* U.S. General Services
16 Administration, San Ysidro Port of Entry, <http://1.usa.gov/1H8W8jA> (last visited
17 Nov. 5, 2015).

18 102. As part of this project, the old pedestrian bridge connecting the United
19 States to Mexico, upon which Mr. Ramirez was standing at the time of the 2010
20 incident, has been decommissioned.

21 103. In 2011, a new pedestrian bridge replaced the old bridge.

22 104. The new bridge runs east to west on the U.S. side of the border,
23 connecting the transit plaza on San Ysidro Boulevard to the east and Camiones
24 Way to the west. Like the old bridge, the new bridge passes over Interstate 5. *See*
25 Elizabeth Aguilera, *San Ysidro's New Pedestrian Bridge Opens Friday*, SAN DIEGO
26 UNION TRIBUNE, Apr. 14, 2011, available at <http://bit.ly/1OSWzEY>.

1 105. The bridge is open to and used by the public to cross over Interstate 5.
2 It does not connect to the border crossing or any port of entry building or edifice;
3 members of the public can and do frequently cross the bridge without crossing the
4 border or entering or exiting any port of entry building.

5 106. The outdoor vehicle inspection areas where CBP officers conduct
6 primary and secondary inspections are visible from this new bridge, as are portions
7 of the City of San Diego and United States to the north and City of Tijuana and
8 Mexico to the south.

9 107. Under the current configuration of the San Ysidro port of entry, Mr.
10 Ramirez wishes to exercise his First Amendment rights to photograph and
11 otherwise record matters exposed to public view, including CBP officers engaged
12 in the public discharge of their duties, from one or more of the following outdoor
13 areas:

14 (a) The transit plaza on San Ysidro Boulevard and adjacent
15 sidewalk. This transit plaza and adjacent sidewalk are outdoors
16 and open to and used by the public. Members of the public can
17 and frequently do use the transit plaza and adjacent sidewalk
18 without crossing the border or entering or exiting any port of
19 entry building. The exit of the San Ysidro port of entry
20 building—where individuals crossing the border on foot first
21 enter into the United States—is readily visible to pedestrians in
22 the transit plaza and adjacent sidewalk. Upon information and
23 belief, part or all of the transit plaza and adjacent sidewalk is a
24 public forum open to speech and expressive activity by tradition
25 and past usage.

26 (b) The east-to-west pedestrian bridge connecting San Ysidro
27 Boulevard to the east and Camiones Way to the west. As
28

1 explained, this bridge crosses over Interstate 5, so the outdoor
2 vehicle inspection areas where CBP officers conduct primary
3 and secondary inspections are visible to pedestrians.

4 (c) The footpath leading from the transit plaza and adjacent
5 sidewalk to Mexico. This footpath lies to the southeast of the
6 transit plaza, behind certain businesses lining the east side of
7 San Ysidro Boulevard. The eastern side of the footpath is the
8 base of a small hill and is lined with a concrete wall, above
9 which there is a railroad. The western side of the footpath
10 includes chainlink fence overlooking parking lots used by
11 government officials. Approximately halfway down the
12 footpath, there is a small tent behind the eastern concrete wall.
13 This tent is staffed by CBP officials, who sometimes leave the
14 tent to question pedestrians on the path as they move toward the
15 entrance to Mexico. The footpath terminates at a structure
16 through which pedestrians must pass to enter Mexico, which is
17 staffed by Mexican officials, including Mexican law
18 enforcement officers. Members of the public can walk along this
19 footpath without crossing the border or entering or exiting any
20 port of entry building; it is possible to turn around and walk
21 back towards the transit plaza and adjacent sidewalk at any point
22 prior to crossing into the Mexican border building.

23 108. In or near the transit plaza and adjacent sidewalk, the pedestrian
24 bridge, and the footpath, there are several official U.S. government signs posted
25 that appear to prohibit any form of photography from those outdoor areas.

26 109. The ongoing reconstruction of the San Ysidro port of entry has neither
27 lessened nor eliminated public concern about civil and human rights violations
28

1 along the U.S.-Mexico border. Indeed, given that improved infrastructure at the San
2 Ysidro port of entry will accommodate a greater number of border crossers each
3 day, public oversight of federal law enforcement activity at the port is
4 indispensable.

5 110. Mr. Ramirez remains deeply committed to documenting civil and
6 human rights violations throughout the border region, including San Ysidro. He is
7 particularly concerned about the lack of adequate oversight, transparency, and
8 accountability within CBP, and about incidents involving CBP officials' excessive
9 or unwarranted use of force (or other abusive behavior) and racial and religious
10 profiling.

11 **IV. NECESSITY OF AND ENTITLEMENT TO INJUNCTIVE**
12 **RELIEF**

13 111. Since the 2010 incident, Mr. Ramirez has refrained from
14 photographing matters and events exposed to public view from outdoor and exterior
15 areas of the San Ysidro port of entry, including CBP officers engaged in the public
16 discharge of their duties.

17 112. As a result of his experience, and in light of the Policy and Ground
18 Rules, Mr. Ramirez has a reasonable fear that if he attempts to photograph matters
19 and events exposed to public view from the transit plaza and adjacent sidewalk, the
20 pedestrian bridge, or the footpath, he will again be subject to interference by CBP
21 officers and/or their agents. Such interference may include Mr. Ramirez's detention
22 or arrest and the loss of his personal property, such as his cell phone and
23 photographs.

24 113. To document CBP officers' official actions, including potential civil
25 and human rights abuses, Mr. Ramirez is prepared, and intends, to resume
26 photographing matters and events exposed to public view at San Ysidro port of
27 entry (from the transit plaza and adjacent sidewalk, the pedestrian bridge, and the
28 footpath) as soon as he is able to do so without CBP interference.

1 114. Unless enjoined by this Court, CBP can and will continue to enforce
2 the Policy and Ground Rules to prohibit Mr. Ramirez from photographing matters
3 and events exposed to public view from the transit plaza and adjacent sidewalk, the
4 pedestrian bridge, and the footpath.

5 115. As a result of CBP's enforcement of the Policy and Ground Rules, Mr.
6 Ramirez has been chilled, hindered, deterred, and prevented from freely exercising
7 his First Amendment right to photograph matters and events exposed to public view
8 from the transit plaza and adjacent sidewalk, the pedestrian bridge, and the
9 footpath, including CBP officers or their agents engaged in the public discharge of
10 their duties.

11 116. Mr. Ramirez is thus suffering, and will continue to suffer, irreparable
12 harm as a result of refraining from exercising his First Amendment rights.

13 117. Mr. Ramirez has no adequate remedy at law.

14 **CLAIMS FOR RELIEF**

15 **CLAIM ONE**

16 **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—** 17 **BY BOTH PLAINTIFFS AGAINST ALL DEFENDANTS)**

18 118. Plaintiffs re-allege and incorporate by reference each preceding
19 paragraph, as if fully set forth herein.

20 119. The Policy and Ground Rules are prior restraints that violate the First
21 Amendment because they require advance permission to take photographs of
22 matters or events of public interest exposed to public view in exterior and outdoor
23 areas of port of entry property and provide unlimited discretion for CBP officials to
24 grant or deny permission to take such photographs. Such limitless discretion
25 inherently creates an unacceptable risk of viewpoint discrimination, regardless of
26 whether or how it is in fact exercised.

CLAIM TWO

**(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—
BY PLAINTIFF ASKINS AGAINST ALL DEFENDANTS EXCEPT SIDNEY
AKI)**

120. Plaintiffs re-allege and incorporate by reference each preceding paragraph, as if fully set forth herein.

121. As enforced by CBP, the Policy and Ground Rules violate the First Amendment by unreasonably restricting Mr. Askins's right to take photographs of matters and events of public interest exposed to public view from exterior or outdoor areas of the Calexico port of entry, because it is irrational to prohibit photography of such matters and events, regardless of the nature of the forum from which they are taken.

122. To the extent CBP enforces the Policy and Ground Rules to prevent photography of matters or events of public interest in any area of Calexico that is a traditional or designated public forum, such enforcement violates the First Amendment because it is not narrowly tailored to any substantial governmental interest and does not leave open ample alternative channels for expression.

CLAIM THREE

**(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—
BY PLAINTIFF RAMIREZ AGAINST ALL DEFENDANTS EXCEPT
BILLY WHITFORD)**

123. Plaintiffs re-allege and incorporate by reference each preceding paragraph, as if fully set forth herein.

124. As enforced by CBP, the Policy and Ground Rules violate the First Amendment by unreasonably restricting Mr. Ramirez's right to take photographs of matters and events of public interest exposed to public view from exterior or outdoor areas of the San Ysidro port of entry, because it is irrational to prohibit photography of such matters and events, regardless of the nature of the forum from which they are taken.

125. To the extent CBP enforces the Policy and Ground Rules to prevent photography of matters or events of public interest in any area of San Ysidro that is a traditional or designated public forum, such enforcement violates the First Amendment because it is not narrowly tailored to any substantial governmental interest and does not leave open ample alternative channels for expression.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare Defendants' enforcement of the Policy and Ground Rules unconstitutional as applied to photography of matters and events exposed to public view from exterior or outdoor areas of the Calexico and San Ysidro ports of entry;

B. Preliminarily and permanently enjoin all Defendants, their successors, agents, servants and employees, and anyone acting in concert with Defendants or any of the foregoing persons, from preventing, impeding, or otherwise interfering with Plaintiffs' First Amendment rights to make and retain photographs, video recordings, or any other recordings of matters or events exposed to public view from exterior or outdoor areas of the Calexico and San Ysidro ports of entry;

C. Award Plaintiffs' costs, including reasonable attorneys' fees; and

D. Award such other relief as the Court deems proper.

Dated: November 5, 2015

By: /s/ Mitra Ebadolahi
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